

No. 129421

IN THE
SUPREME COURT OF ILLINOIS

ACCURACY FIREARMS, LLC, et al., ¹	)	Petition for Leave to Appeal from
	)	the Appellate Court of Illinois,
Plaintiffs-Respondents,	)	Fifth Judicial District,
	)	No. 5-23-0035
v.)	
)	
Governor JAY ROBERT PRITZKER,)	
and Attorney General KWAME RAOUL,)	
in their official capacities,	)	Interlocutory Appeal from the
	)	Circuit Court for the Fourth
Defendants-Petitioners,	)	Judicial Circuit, Effingham
	)	County, Illinois,
and	)	No. 2023-MR-4
)	
EMANUEL CHRISTOPHER WELCH,)	
in his capacity as Speaker of the House;)	
and DONALD F. HARMON, in his)	
capacity as Senate President,	)	The Honorable
	)	JOSHUA MORRISON,
Defendants.)	Judge Presiding.

SUPPLEMENT TO PETITION FOR LEAVE TO APPEAL AND
SUPPLEMENTAL APPENDIX

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Solicitor General

Attorneys for Defendants-Petitioners
Governor JB Pritzker and Attorney
General Kwame Raoul

¹ The caption to the appellate court decision, which is in the appendix to the petition for leave to appeal, has a complete list of Plaintiffs-Respondents ("respondents"). A1-12.

E-FILED
8/30/2023 12:49 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

SUPPLEMENTAL ARGUMENT

As a supplement to the relief requested in their petition for leave to appeal (“PLA”), Defendants-Petitioners Governor JB Pritzker and Attorney General Kwame Raoul (“petitioners”) alternatively request that this Court exercise its supervisory authority to vacate the appellate court’s opinion in light of changed circumstances. Petitioners sought this Court’s review of the appellate court’s opinion affirming the circuit court’s temporary restraining order (“TRO”) enjoining certain provisions of the Protect Illinois Communities Act (“Act”), Public Act 102-1116, because, the appellate court concluded, they likely violated the Illinois Constitution’s equal protection clause. In *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 53, this Court rejected an equal protection challenge to those provisions, describing the appellate court’s reasoning when affirming the TRO as “misguided.” Following *Caulkins*, the circuit court vacated the TRO and dismissed respondents’ complaint with prejudice. Because the TRO that is the subject of petitioners’ pending PLA has been vacated, this appeal is now moot, and therefore this Court should exercise its supervisory authority and vacate the appellate court’s opinion affirming the TRO so that it does not stand as precedent in future cases. *See, e.g., In re Marriage of Eckersall*, 2015 IL 117922, ¶ 20.

I. Circumstances have now changed because the TRO that is the subject of this PLA has been vacated.

Respondents filed this action in the Circuit Court of Effingham County challenging the constitutionality of the restrictions on possession and sale of

assault weapons and “large capacity ammunition feeding device[s]” within the Act. Relevant here, the respondents’ complaint alleged that the restrictions violated the Illinois Constitution’s guarantee of equal protection because the restrictions contained certain exemptions. *See Accuracy Firearms v. Pritzker*, 2023 IL App (5th) 230035, ¶ 10; 720 ILCS 5/24-1.9(e) & 1.10(e).

On January 20, 2023, the circuit court entered a TRO. On January 31, 2023, the appellate court issued a 2-1 decision affirming the TRO. *See generally Accuracy Firearms*, 2023 IL App (5th) 230035. As part of that decision, the majority determined that respondents would likely succeed on their equal protection claim. *Id.* at ¶¶ 48-63. Petitioners filed a request to file an oversize PLA, as well as to expedite consideration of the petition and allow the petition to stand as petitioners’ opening brief. This Court allowed the oversize petition, and denied the request for expedited consideration. Respondents answered the petition on March 20, 2023.

Meanwhile, a different set of plaintiffs, represented by different counsel, brought an action challenging the Act’s restrictions in the Circuit Court of Macon County. These plaintiffs (“*Caulkins* plaintiffs”) alleged an equal protection claim similar to the one in this case. *See Caulkins v. Pritzker*, 2023 IL 129453, ¶ 18. The parties in *Caulkins* moved for summary judgment, and the circuit court entered a final judgment, which, as relevant here, granted judgment to the *Caulkins* plaintiffs on their equal protection claim. *Caulkins*, 2023 IL 129453, ¶¶ 17, 22. In particular, the circuit court in *Caulkins*

reasoned that it was obligated to follow the appellate court's opinion in *Accuracy Firearms*. *See id.* at ¶ 22.

Petitioners, who are defendants in *Caulkins*, filed a notice of direct appeal to this Court. *See id.* at ¶ 24. Petitioners also filed a motion to hold the PLA in *Accuracy Firearms* in abeyance pending the Court's disposition of *Caulkins*. *See* Supp. A2-4. This Court allowed petitioners' motion, and the PLA remains pending. Supp. A2-4.

On August 11, 2023, this Court issued its decision in *Caulkins*, reversing the circuit court's judgment and rejecting the *Caulkins* plaintiffs' equal protection claim. *Caulkins*, 2023 IL 129453, ¶¶ 51-74, 81. The Court described the reasoning of the appellate court in *Accuracy Firearms* that respondents were likely to succeed on their equal protection claim as "misguided." *Id.* at ¶ 53.

A few days later, the circuit court filed an order dismissing respondents' complaint with prejudice and vacating the TRO that is the subject of the pending PLA. Supp. A5.

II. Because the TRO has been vacated, this appeal is moot and the Court should vacate the appellate court's decision.

An appeal becomes moot if the reviewing court cannot grant effectual relief. *See Commonwealth Edison Co. v. Ill. Com. Comm'n*, 2016 IL 118129, ¶ 10. When an underlying action becomes moot while an appeal to this Court is pending, this Court may exercise its supervisory authority to vacate the relevant appellate court decision, "to preclude the lower courts' resolution of

the issues from standing as precedent for future cases.” *Eckersall*, 2015 IL 117922, ¶ 20; *see Commonwealth Edison Co.*, 2016 IL 118129, ¶ 22 (exercising supervisory authority to vacate appellate court judgment because appeal was moot).

Here, the circuit court has vacated the TRO that is the subject of petitioners’ pending PLA and dismissed respondents’ complaint with prejudice. Supp. A5. Because the TRO that is the subject of the PLA has been vacated, this Court cannot grant petitioners’ effectual relief. Accordingly, the appeal is moot, and the appellate court’s opinion affirming the TRO should be vacated so that it does not stand as precedent in future cases. Vacatur is particularly appropriate here because this Court described the appellate court’s reasoning as “misguided.” *Caulkins*, 2023 IL 129453, ¶ 53.

In light of these changed circumstances, petitioners that, in the alternative to the relief requested in the PLA, that this Court exercise its supervisory authority to vacate the appellate court’s decision. *See* Ill. Sup. Ct. R. 315(a) (PLA may include request that Court exercise its supervisory authority). Should the Court exercise its supervisory authority and vacate the appellate court’s opinion based on mootness, petitioners suggest that the Court also deny the petition for leave to appeal.

CONCLUSION

For these reasons, Defendants-Petitioners request that this Court, at a minimum, exercise its supervisory authority to vacate the appellate court's opinion.

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Attorneys for Defendants-
Petitioners Governor JB Pritzker
and Attorney General Kwame Raoul

August 22, 2023

TABLE OF CONTENTS TO SUPPORTING RECORD

Verification by Certification of Leigh J. Jahnig, executed August 22, 2023	Supp. A1
Order Holding Petition for Leave to Appeal in Abeyance <i>Accuracy Firearms v. Pritzker</i> , Supreme Court of Illinois (No. 129421) April 18, 2023.....	Supp. A2-Supp. A4
Docket Order <i>Accuracy Firearms v. Pritzker</i> , Circuit Court of Effingham County (No. 2023-MR-4) August 16, 2023	Supp. A5-Supp. A6

VERIFICATION BY CERTIFICATION

I, LEIGH J. JAHNIG, state the following:

1. I am a citizen of the United States over the age of 18. My current business address is 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601. I have personal knowledge of the facts stated in this verification by certification. If called upon, I could testify competently to these facts.

2. I am an Assistant Attorney General in the Civil Appeals Division of the Office of the Attorney General of the State of Illinois, and I am one of the attorneys representing Defendants-Petitioners in this matter. I submit this verification in support of Defendants-Petitioners' Supplemental Appendix in this matter.

3. I am the attorney responsible for preparing the Supplemental Appendix, to be filed with this Court with and in support of Defendants-Petitioners' supplement to the petition for leave to appeal in this matter. I am familiar with the documents that have been filed and the orders entered by this Court in this matter (No. 129421). I am also familiar with the documents that have been filed and the orders entered by the Circuit Court of Effingham County in this matter (No. 2023-MR-4). I am also familiar with the documents that have been filed in this Court in *Caulkins v. Pritzker* (No. 129453), as well as this Court's opinion in that matter.

4. The documents included in the Supplemental Appendix include true and correct copies of orders entered in this matter.

5. The other factual statements made in the motion are true and correct to the best of my knowledge, information, and belief.

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

Executed on August 22, 2023

/s/ Leigh J. Jahnig
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SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CYNTHIA A. GRANT
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

April 18, 2023

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

Leigh Jacqueline Jahnig
Office of the Illinois Attorney General
100 West Randolph Street, 12th Floor
Chicago, IL 60601

In re: Accuracy Firearms, LLC v. Pritzker
129421

Dear Leigh Jacqueline Jahnig:

Enclosed is a certified order entered April 18, 2023, by the Supreme Court of Illinois in the above-captioned cause.

Very truly yours,

A handwritten signature in cursive script that reads "Cynthia A. Grant".

Clerk of the Supreme Court

cc: Appellate Court, Fifth District
Attorney General of Illinois - Civil Division
Effingham County Circuit Court
Thomas Guy DeVore

Supp. A2

State of Illinois Supreme Court

I, Cynthia A. Grant, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof do hereby certify the following to be a true copy of an order entered April 18, 2023, in a certain cause entitled:

129421)	
)	
Accuracy Firearms, LLC, et al.,)	
)	
Respondents)	
)	
v.)	
)	
Jay Robert Pritzker, in His Capacity as)	
Governor, Kwame Raoul, in His	)	Petition for Leave to Appeal from
Capacity as Attorney General, Emanuel	)	Appellate Court
Christopher Welch, in His Capacity as	)	Fifth District
Speaker of the House, and Donald F.	)	5-23-0035
Harmon, in His Capacity as Senate	)	23MR4
President)	
# # # # #)	
Jay Robert Pritzker, in His Capacity as)	
Governor, and Kwame Raoul, in His)	
Capacity as Attorney General,)	
)	
Petitioners)	

Filed in this office on the 24th day of February A.D. 2023.



IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Supreme Court, in Springfield, in said State, this 18th day of April, 2023.

Cynthia A. Grant

*Clerk,
Supreme Court of the State of Illinois*

SUPREME COURT OF ILLINOIS

Accuracy Firearms, LLC, et al.,)	
)	
Respondents)	
	)	Petition for Leave to Appeal from
v.	)	Appellate Court
	)	Fifth District
Jay Robert Pritzker, in His Capacity as	)	5-23-0035
Governor, Kwame Raoul, in His Capacity	)	23MR4
as Attorney General, Emanuel)	
Christopher Welch, in His Capacity as)	
Speaker of the House, and Donald F.)	
Harmon, in His Capacity as Senate)	
President)	
# # # # #)	
Jay Robert Pritzker, in His Capacity as)	
Governor, and Kwame Raoul, in His)	
Capacity as Attorney General,)	
)	
Petitioners)	

ORDER

This cause coming to be heard on the motion of petitioners, Jay Robert Pritzker and Kwame Raoul, due notice having been given, and the Court being fully advised in the premises;

IT IS ORDERED that the motion to hold petition for leave to appeal in abeyance pending disposition in case No. 129453, Caulkins v. Pritzker. Allowed.

Order entered by the Court.

FILED
April 18, 2023
SUPREME COURT
CLERK

State of Illinois**In the Circuit Court of Judicial Circuit #4****Effingham County**TAMMY J KREKE
Effingham County, ILDeclaratory Judgment
ACCURACY FIREARMS LLC ET AL ET AL
VS.
PRITZKER, JAY ROBERT ET ALP 001 }
D 001 }

Case number: 2023-MR-000004

Notice to:

JAHNIG, LEIGH**KINKEAD, DARREN**
500 SOUTH SECOND STREET

ATTN: TAD HUSKEY, DEPUTY CHIEF SPRINGFIELD, IL 62701-0000

KASPER, MICHAEL
151 NORTH FRANKLIN STREET, SUITE 100

CHICAGO, IL 60606-0000

KINKEAD, DARREN
500 SOUTH SECOND STREET

ATTN: TAD HUSKEY, DEPUTY CHIEF SPRINGFIELD, IL 62701-0000

DEVORE, THOMAS G
118 N SECOND ST

GREENVILLE, IL 62246-0000

Take notice that the following entries were made on the above-titled case:

08/15/2023 This matter is taken off advisement. This matter having previously come on for hearing on Defendants' Motion to Dismiss, having considered the pleadings, the arguments, and applicable authority, now being more fully advised in the premises, I find and Order as follows: Plaintiffs filed the First Amended Complaint For Declaratory Judgment and Injunctive Relief challenging the constitutionality of the Protect Illinois Communities Act, also known as Public Act 102-1116 or House Bill 5471. In Count I, Plaintiffs allege the act violates the three reading rule contained in the Illinois Constitution. In Count II, they allege that exceptions to the prohibition of possession, and sale of certain weapons, and devices contained in the act, violate the right to equal protection. Count III seeks a permanent injunction against enforcement based on the grounds alleged in Counts I and II. Since this court heard arguments on Defendants' Motion to Dismiss, the Illinois Supreme Court issued its Opinion in CAULKINS v. PRITZKER, et al. 2023 IL 129453. In that case the Court held that the exemptions contained in the act did not deny equal protection, and went on to say that the Plaintiffs in that case are not similarly situated to the trained professionals to which the exceptions apply. Based on CAULKINS v. PRITZKER, Count II is dismissed with prejudice. The Court did not address the three reading rule, because the Plaintiffs in that case failed to cross-appeal from the denial of relief on those grounds in the trial court. The Illinois Supreme Court has, however previously held that because of the enrolled bill doctrine upon certification by the Speaker and the Senate President, a bill is conclusively presumed to have met all procedural requirements for passage, including the three readings rule. GEJA'S CAFE, v. METROPOLITAN PIER & EXPOSITION AUTHORITY, 153 Ill. 2d 239, 258-260 (1992). Based on the enrolled bill doctrine, Count I is dismissed with prejudice. Because both Counts I and II are dismissed with prejudice, there is no underlying claim to pursue, Count III is dismissed with prejudice. Based on the foregoing, The pending Motions to Quash Non Party Subpoena and Motion to Quash Discovery Request are moot and not addressed. The Temporary Restraining Order previously entered is vacated. Clerk to provide copies of this docket entry to attorneys of record.

DLJ

State of Illinois
In the Circuit Court of Judicial Circuit #4
Effingham County

Declaratory Judgment
 ACCURACY FIREARMS LLC ET AL ET AL
 VS.
 PRITZKER, JAY ROBERT ET AL

P 001 }
 D 001 }

Case number: 2023-MR-000004

/s/TAMMY J KREKE, Circuit Clerk (JMH)

 Circuit Clerk, TAMMY J KREKE

This notice issued on Wednesday, August 16, 2023.

 Deputy

FILE COPY

JMH

Supp. A6

CERTIFICATE OF FILING AND SERVICE

I certify that on August 22, 2023, I electronically filed the foregoing **Supplement to Petition for Leave to Appeal and Supplemental Appendix** with the Clerk of the Court for the Supreme Court of Illinois, by using the Odyssey eFileIL system.

I further certify that the other participant in this appeal, named below, is a registered service contact on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

Thomas G. DeVore
tom@silverlakelaw.com

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Leigh J. Jahnig
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